IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

OP.No. 3300 of 2001(P)

PETITIONER:

M.C.MARIYU, W/O.ABDUL RAHIM ANSARI,
"BAITHU SHUIEB" NEAR SAIDARPALLI,
THIRUVANGAD, TELLICHERRY.1.

BY ADV. SRI.T.A.RAMADASAN

RESPONDENTS:
----

1. **THE TAHSILDAR (ASSESSING AUTHORITY UNDER KERALA BUILDING TAX ACT) TELLICHERRY.**

2. **THE REVENUE DIVISIONAL OFFICER, (APPELLATE AUTHORITY UNDER KERALA BUILDING TAX ACT) TELLICHERRY.**

3. **THE DISTRICT COLLECTOR, (REVISIONAL AUTHORITY UNDER KERALA, BUILDING TAX ACT) KANNUR**

4. **STATE OF KERALA, REP.BY CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM.**

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12 / 01 / 2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.5400/2001 IN OP. 3300/2001

DISMISSED

12.1.2007 **SD/- K.BALAKRISHNAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE OCCUPANCY CERTIFICATE ISSUED BY THE MUNICIPAL COMMISSIONER DT.15.6.88.

EXT.P2:- COPY OF THE ORDER OF ASSESSMENT NO.A4 18028/97 DT.18.9.97.

EXT.P3:- COPY OF THE NOTICE DEMAND NO. A4 18028/97 DT.18.9.97.

EXT.P4:- COPY OF THE RECEIPT TO PROVE THE REMITTANCE OF 1ST INSTALMENT IN BOOK NO.613 DT.21.10.97.

EXT.P5:- COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT NO.F 9821/97 DT.1.7.99.

EXT.P6:- COPY OF THE ORDER IN OP. 18271/99 OF THIS HONOURABLE COURT DT.27.7.99.

EXT.P7:- COPY OF THE RECEIPT OF PAYMENT IN BOOK NO.682 DT.30.7.99.

EXT.P8:- COPY OF THE ORDER OF THE 3RD RESPONDENT NO.G1 42096/99 DT.21.12.2000.

/TRUE COPY/

tss

K.BALAKRISHNAN NAIR, J.

O.P.NO.3300 OF 2001-P

Dated this the 12th day of January, 2007

JUDGMENT

The petitioner constructed a building in Thalassery Municipality area in 1988. The building permit for the same was obtained from the local authority in 1985. The occupancy certificate was issued on 15-6-1988. The petitioner failed to file return under Sec.7 of the Kerala Building tax Act. The Village Officer concerned came to notice this new building. So, he directed the petitioner to file return under Sec.7(3) of the Building Tax Act and the Village Officer forwarded the return to the Tahsildar along with his comments. The Tahsildar assessed building tax for the said building by Ext.P2 order dated 18-9-1997 at the rate applicable in 1997. According to the petitioner, the construction of the building was competed in 1988. It being a taxing event under Section 5 of the Kerala Building Tax Act, the tax prevailing at the rate then in force alone should have been levied and demanded. Feeling aggrieved by Ext.P2, the petitioner filed an appeal before the R.D.O. That appeal was dismissed by Ext.P5. Petitioner filed revision before the District Collector. That

revision was dismissed by Ext.P8. The authorities below concurrently held that the rate applicable is the rate prevailing at the time of assessment. The petitioner challenges the said finding. According to him, the rate applicable should be governed in force in 1988.

2. The first respondent has filed a counter affidavit supporting the impugned orders. Along with the counter Ext.R1 (a) has been produced which would show that the capital value of the building in 1988 will come to Rs.5,06,325/-.

3. The petitioner has filed a reply affidavit disputing the capital value estimated in Ext.R1(a).

4. Heard. I am of the view that the contention of the petitioner has to be accepted. The taxing event is the completion of the building which took place in 1988. Therefore, the tax can be levied and demanded only at the rate applicable in 1988. Even if the petitioner failed to file any returns, the consequence will be that she will be espousing herself to the penalty that may be imposed under Sec.22 of the Building Tax Act.

In the result, the original petition is allowed. Exts.P2, P5 and P8 are quashed. The Tahsildar is directed to assess the building tax, in accordance with law at the rate applicable in the year

1988, within two months from the date of production of a copy of this judgment after affording an opportunity of being heard to the petitioner. The Tahsildar is free to pass appropriate orders, if he thinks fit under Sec.22 of the Building Tax Act also. If there is any proposal to pass orders under Sec.22, the petitioner shall be put to notice and she shall be given an opportunity of being heard also. While making fresh demand based on the fresh assessment the amount already paid by her, pursuant to the interim order of this Court shall be given credit to.

The Original Petition is disposed of as above.

K.BALAKRISHNAN NAIR,JUDGE.

MS

K.BALAKRISHNAN NAIR, J.

O.P. No.3300 OF 2001-P

J U D G M E N T

DATED 12TH JANUARY,2007